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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

List of issues prior to submission of the combined seventeenth to twenty-second periodic reports of Botswana*

General information

1. Please provide information on any significant developments that have taken place, since the previous review, in the legal and institutional framework through which human rights, in particular those covered by the Convention, are promoted and protected at the national level. Please indicate how the Committee's previous concluding observations have been taken into account in realizing those developments.

2. Please provide information on progress made to strengthen the Inter-Ministerial Committee on Treaties, Conventions and Protocols and to provide it with adequate human and financial resources.

3. Please provide information on measures taken to give due consideration to the Convention in designing and implementing Vision 2036, the eleventh National Development Plan and the national strategy for poverty reduction of 2009.

4. Please provide information on examples of cases in which domestic courts referred to the Convention, including for interpretation purposes. Please also provide information on measures taken to increase awareness about the Convention among judges, lawyers and other law enforcement officials.

5. Please provide information on measures taken and machinery developed domestically to follow up on recommendations contained in the Committee's previous concluding observations, and indicate whether civil society organizations have been involved in that process. Please also provide information on measures taken to increase the visibility of the Convention and to raise awareness among the population on the rights and protection to which everyone is entitled under the Convention.

6. Please provide updated information on the ethnic and linguistic composition of the State party's population, including non-citizens such as asylum seekers, refugees, stateless persons and migrants. Please clarify the procedures in place for the recognition of national or ethnic minorities and indigenous peoples in the State party and for taking into account in those procedures the Committee's general recommendations No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention and No. 24 (1999) concerning article 1 of the Convention.

* Adopted by the Committee at its ninety-fifth session (23 April–11 May 2018).

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Article 1

7. Please indicate whether:

(a) The State party has taken any steps to incorporate into section 3 of its Constitution, on protection from discrimination, the elements of descent and national or ethnic origin provided for in article 1 of the Convention;

(b) Other legislation of the State party contains a definition of racial discrimination that is fully in line with article 1 of the Convention;

(c) Indirect discrimination is included in the definition of racial discrimination in domestic law;

(d) Measures have been taken to revise subsections 4 (b), (c), (d) and 9 under section 15 of the Constitution, which provide for exceptions to non-discrimination, on the basis of race, ethnic origin, community or tribe and immigration status. Describe the extent to which domestic laws integrate such constitutional exceptions and explain how they may be in compliance with article 1 (2) and (3) of the Convention;

(e) The State party's legislation allows or provides for special measures to reduce sociocultural inequalities between those living in rural areas and the rest of the population, to ensure the access of certain ethnic groups, in particular non-Tswana and Basarwa groups, to development and to ensure a more equal distribution of wealth among the different groups living in the territory of the State party, including under the Vision 2016 and Vision 2036 initiatives, the eleventh National Development Plan, the national strategy for poverty reduction of 2009 and the Remote Area Development Programme.

Article 2

8. Please provide updated information on the legal framework and the policies in place to eliminate racial discrimination and to give effect to the provisions of article 2 of the Convention. Please provide information on how the Bogosi Act ensures the balance in the representation of different tribes –– Tswana and non-Tswana — within the Ntlo ya Dikgosi (House of Chiefs). Please provide information on measures taken to ensure, in practice, the universal recognition of all tribes and their *kgosi* (tribal leaders) on an equal footing, including with regard to the leaders' installation, remuneration and consultation in matters affecting their people.

9. Please provide information on progress made to adopt the amendment bill that will assign a human rights mandate to the Office of the Ombudsman. Please provide details on the bill and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Article 3

10. Please provide information on the concrete measures taken and the results achieved with regard to overcoming the marginalization and segregation of some communities. Please provide information on measures taken to prevent segregation and to protect non-citizens, in particular refugees and asylum seekers, from being subjected to segregation.

Article 4

11. Please provide information on legislative or other measures taken to:

(a) Criminalize the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination;

(b) Integrate the elements of ethnic origin and descent into the definition of discrimination provided for in article 94 (2) of the Penal Code;

(c) Criminalize the financing of racist activities;

(d) Consider racial motives as aggravating circumstances under domestic penal legislation.

12. Please provide information on decisions taken by national courts and other State institutions regarding acts of racial discrimination, in particular offences referred to in the subparagraphs of article 4 of the Convention. Please also provide statistical data, disaggregated by sex, age and ethnic or national origin, on complaints filed with, inter alia, the police and the Ombudsman, and on prosecutions launched and sentences handed down for acts prohibited under article 4 of the Convention and on the reparations provided to victims.

13. Please provide information on progress made in adopting a legislative framework to criminalize racial discrimination on the Internet.

Article 5

14. Please provide information on the exercise of the rights enshrined in article 5 of the Convention by members of ethnic groups and by non-citizens, including refugees, asylum seekers and stateless persons, focusing in particular on economic, social and cultural rights, including access to social services. Please also provide information on the results achieved through various strategies and programmes, such as the Remote Area Development Programme, in reducing the marginalization and exclusion of some ethnic communities and indigenous peoples, and in ensuring their economic, social and cultural rights, in particular with respect to access by the Basarwa peoples to education and health, food, safe drinking water and social services.

15. Please provide data on the participation of different ethnic groups and indigenous peoples in political and public affairs at the national and district levels, including in representative or elected bodies, in the administration and in government agencies. Please also provide information on mechanisms or procedures established for adequate consultation of ethnic and indigenous communities in decision-making processes that affect their livelihoods.

16. Please provide information on measures taken to protect the Basarwa peoples from continuous dispossession of the lands they have traditionally occupied and used for agropastoralism, hunting, gathering and harvesting, in particular in western Botswana. In that vein, please provide information on measures to fully implement the decision of the High Court of Botswana in the *Sesana and others* case (2006) and to facilitate the return of San peoples removed from the Central Kalahari Game Reserve.

17. Please provide information on access, by persons belonging to the most disadvantaged and marginalized ethnic groups, to domestic courts and indicate to what extent they benefit from the legal aid system. Please provide information on measures taken to ensure that persons belonging to the Basarwa and other non-Tswana tribes who do not understand English or Setswana have access to interpretation services before courts.

18. Please provide information on measures taken to expand the teaching of mother tongues to children belonging to non-Tswana ethnic groups and indigenous peoples at the level of early schooling. Please also provide information on measures taken to ensure that school curricula integrate references to the history, culture and traditions of non-Tswana ethnic groups and indigenous peoples. Please further provide information on measures taken to promote, in the media, the culture of non-Tswana peoples and of indigenous peoples.

19. Please provide data, disaggregated by age, sex and ethnic or national origin, on trafficking in persons in Botswana, including children and women, particularly indigenous and migrant girls, for the purpose of sexual or labour exploitation. Please provide information on the effective implementation of the Anti-Human Trafficking Act, 2014, in particular statistical data on reported cases, complaints filed, investigations carried out, perpetrators prosecuted, penalties imposed on perpetrators and reparations awarded or rehabilitation measures proposed to victims. Please inform the Committee of the protection measures available to victims, including shelters and protection against retaliation. Please provide information on the outcome of the awareness-raising campaign against trafficking in persons carried out by the State party; please also indicate whether additional awareness-raising campaigns took place and, if so, what the results were. Please provide information on the implementation of the anti-human trafficking national action plan for the period

2017–2020 with respect to combating trafficking in persons and provide details on the composition, the mandate, the resources allocated to and the activities of, the Human Trafficking (Prohibition) Committee established in 2015.

20. Please provide statistical data on refugees, asylum seekers, stateless persons and internally displaced persons. Please provide information on the prevention of racial discrimination, including violence, stigmatization and ill-treatment by police officers, against persons belonging to these groups. Please provide information on their access to economic, social and cultural rights, including to education and health, and provide specific information on the situation of asylum seekers and refugees living in the Dukwi camp. Please clarify whether refugees and asylum seekers have benefited from the programmes for antiretroviral therapy and for the prevention of mother-to-child transmission of HIV, as well as from other programmes. Please indicate whether the State party has conducted, in minority languages, education programmes, surveys and awareness-raising campaigns on HIV/AIDS. Please provide information on the measures taken to register all children born to refugee and asylum seekers parents on the territory of the State party. In that vein, please indicate the measures taken to ensure that children born to stateless parents do not become stateless and can obtain citizenship at birth.

Article 6

21. Please provide information on the legislative, judicial, administrative or other measures that give effect to the provisions of article 6 of the Convention. In particular, please provide information on the practice and decisions of courts and other judicial and administrative organs, including the Ombudsman, relating to cases of racial discrimination as defined under article 1 of the Convention.

22. Please indicate the measures taken to inform the public of the different remedies available in relation to acts of racial discrimination, to promote the filing of complaints and to ensure prevention of and protection from acts of reprisal against complainants.

23. Please provide information, including examples, on the types of reparation and satisfaction that are considered adequate in domestic law in cases of racial discrimination. Please also provide information on the burden of proof in civil proceedings for cases involving racial discrimination.

Article 7

24. Please provide information on legislative and administrative measures taken to combat prejudices that lead to racial discrimination, including general information on the education system. Please also provide information on the impact of the human rights education provided in schools, including in relation to the rights contained in the Convention. Please provide updated information on the human rights training given to law enforcement officers, including training on racial discrimination, and describe the impact of any such training.

25. Please indicate the role of State media in the dissemination of information to combat prejudices that lead to racial discrimination. Please also provide information on action taken to encourage awareness among professionals of all media of their particular responsibility not to encourage prejudice and to avoid reporting incidents involving individual members of groups protected under the Convention in a way that blames such groups as a whole.

26. Please provide updated information on the measures taken to promote tolerance, understanding and dialogue among different ethnic or indigenous groups and other groups living in the territory of the State party and on the results of any such measures.